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THE SMALL BUSINESS DEVELOPMENT CENTERS IMPROVEMENT ACT OF 2015

APRIL 21, 2016.—Ordered to be printed

Mr. VITTER, from the Committee on Small Business and
Entrepreneurship, submitted the following

R E P O R T

[To accompany S. 999]

The Committee on Small Business and Entrepreneurship, to which was referred the bill (S. 999) to amend the Small Business Act to provide for improvements to small business development centers, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill, as amended, do pass.

I. INTRODUCTION

The Small Business Development Centers Improvement Act of 2015 (S. 999) was introduced by the Committee's Chair, Senator David Vitter, on April 16, 2015.

The purpose of the Small Business Development Centers Improvement Act of 2015 is to improve the Small Business Development Centers (SBDCs) program and ensure SBDCs continue successful delivery of entrepreneurial development services to small businesses. SBDCs represent a key component of the Small Business Administration's (SBA) counseling and training programs for small businesses. In order to continue these services, the Small Business Development Centers Improvement Act of 2015 (by amending the Small Business Act¹ requires limitations on the creation and funding of SBA initiatives outside those mandated by Congress. The legislation also strengthens the quality, scope, and

¹Originally, title II of the Act of July 30, 1953, c. 282, 67 Stat. 232 was designated as the Small Business Act of 1953. A plethora of amendments in subsequent Congresses led to a rewrite in 1958. Pub. L. No. 85-536, Sec. 1, 72 Stat. 384 (1958). The Act is codified at 15 U.S.C. 631-657s.

performance of SBDCs through enhanced SBDC marketing and data privacy, allowance for accepting participation fees from community partners, responsible spending, broader servicing areas, and improved grant distribution.

During the markup of the bill, the Vitter amendment to the bill was approved by voice vote. The Vitter amendment removes the requirement for an annual report on all entrepreneurial development activities undertaken in the current fiscal year. The bill, as amended, was also approved unanimously by voice vote.

II. HISTORY (PURPOSE & NEED FOR LEGISLATION)

The United States has consistently recognized the need to encourage entrepreneurship as a means to combat unemployment and promote economic development. Therefore, the SBA's mission, as evinced in the Small Business Act, 15 U.S.C. Sec. 631–57p, is to “aid, counsel, assist, and protect, insofar as is possible, the interests of small business concerns . . .”² In carrying out its mission to provide small businesses with assistance, the SBA oversees a number of programs that offer counseling to potential entrepreneurs and extant small business owners. The SBA itself does not generally carry out this training; in most circumstances, the agency enters into a cooperative agreement with another organization to offer such services. These parties are termed as resource partners by the SBA and are required to obtain a significant portion of their operating budgets from non-federal sources (be they private donors or state funds).

The largest such program is set out in Sec. 21 of the Small Business Act, 15 U.S.C. 648. The program is denominated as the SBDC Program because the resource partners—SBDC grantees—operate service centers where small business owners and potential entrepreneurs can receive free counseling. Typically, the grantee is an institution of higher education (but not always) and the grantee agrees to offer these services throughout a state or through a portion of the state.³ Since its inception, the SBDC program has been extremely successful in training and counseling small firms. For example, in fiscal year (FY) 2013, SBDCs trained over 330,000 clients and counseled over 201,000 clients. Further, in FY 2013 SBDCs assisted small business clients in obtaining \$4.5 billion in financing.

While the SBDC program has achieved many notable results, the program has not received a comprehensive modernization in several years. The Committee also has learned of certain operational challenges faced by SBDC grantees that hinder their ability to offer services to small business owners. The Committee has determined that these operational issues should be rectified legislatively. The majority of necessary legislative changes would be minor, such as statutorily prescribing that SBDCs may market their services and collect fees at partnership events, as well as eliminating the Administrator's ability to reimburse the SBA for administrative expenses associated with the SBDC program. In this case, as federal funding becomes scarcer, it is necessary to update the Small Business Act to ensure that SBDCs receive all funding allocated in the

²*Id.* at 631(a)

³The grantee agrees to provide services throughout a state. For reasons not relevant to H.R. 4121, two states—California and Texas—do not have statewide grantees.

budget, and are able to obtain matching funds through self-promotion of the benefits of their program and fostering a fruitful relationship with local community partners.

The SBA has three other resource partners focused on entrepreneurial training. Although their missions and scope of service territories also vary, the Women’s Business Centers (WBCs) and Veteran Business Outreach Centers (VBOCs) operate in a fashion akin to that of the SBDCs. The other major entrepreneurial outreach program, SCORE, operates somewhat differently. Although SCORE also offers free advice (from volunteer active and retired business executives), SCORE is provided almost all of its funds from those appropriated by Congress. The SBA also is required to provide offices and other ancillary services to SCORE at no charge to SCORE or its clients.

III. HEARINGS & ROUNDTABLES

In the 112th Congress:

The Committee held a number of hearings during the 112th Congress related to the SBDCs and oversight of entrepreneurial development programs at the SBA. On July 21, 2011, the Committee held a hearing titled, “Entrepreneurial Development: Obstacles and Opportunities for Supporting, Sustaining and Growing America’s Entrepreneurs,” which heard from relevant trade associations, small business owners, and the SBA regarding SBA’s entrepreneurial development programs and possible legislative proposals to improve/reauthorize these programs. On November 29, 2012, the Committee held a hearing titled, “Creating Jobs and Growing the Economy: Legislative Proposals to Strengthen the Entrepreneurial Ecosystem.” This hearing was held to consider S. 3442, the SUCCESS Act, which included provisions limiting grant distribution to higher education institutions and eliminating the geographical restrictions for SBDC assistance after a presidentially-declared natural disaster.

In the 113th Congress:

In the 113th Congress, the House Committee on Small Business held hearings relevant to the SBDCs and other entrepreneurial development programs at the SBA. One hearing, entitled ‘Entrepreneurial Assistance: Examining Inefficiencies and Duplication Across Federal Programs’ on March 20, 2013, specifically examined inefficiencies, redundancies and other challenges to in the SBA entrepreneurial assistance programs. A witness from the Government Accountability Office (GAO) discussed a recent GAO report that addressed particular challenges to the SBDC program, including missed opportunities for more collaboration with other public and private programs as well as difficulties in obtaining data on the progress of SBDCs.

On April 18, 2013, the Committee held a hearing entitled “The Budget Outlook for the Small Business Administration” at which members, on a bipartisan basis, raised concerns with the then-administrator about the impact that these new initiatives would have on existing resource partners. Some members expressed concerns that creating new programs, rather than utilizing existing programs and resources, would cause confusion and result in less aid being delivered overall. Several members thought that the services

provided under the new SBA initiatives could be provided under existing programs.

On March 5, 2014, the House Committee on Small Business approved the Small Business Development Centers Improvement Act of 2014 (H.R. 4121). H.R. 4121 would have banned the SBA from prohibiting applicants receiving grants under the SBDC program from marketing and advertising their services. Additionally, the legislation would have revised privacy requirements, directed the SBA to consult with SBDC associations to develop documents governing data collection activities, would have prohibited the SBA from awarding grants under the SBDC program to entities other than not-for-profit institutions of higher education, and would have removed the geographic proximity requirement in situations involving a presidentially-declared disaster area. The Committee passed the bill, as amended, by voice vote.

IV. DESCRIPTION OF BILL

S. 999 would require that all SBA-created initiatives be delivered through those authorized programs specifically cross-referenced in this subsection. The exceptions to this overall prohibition, in subsections (a)(2)(A)–(E), relate to assistance offered to: small business concerns owned by an Indian tribe; activities and programs in support of a member of the Armed Forces, including the Reserves and National Guard, a veteran, or a spouse of a service member or a veteran; the PRIME, STEP, and FAST programs; and other initiatives in operation at the time the Committee considered this bill.

The Small Business Act is silent on the question of whether SBDCs can market and advertise its products and services. This bill amends Section 21 of the Act to ensure the SBDCs are able to market and advertise their products and services. Greater awareness of the services available through the SBDCs will allow more small businesses to receive entrepreneurial assistance without imposing any more financial burdens on SBDCs, the SBA, or the taxpayer.

In order for the SBA to provide Congress with information to properly evaluate entrepreneurial development programs, the SBA has attempted to gather better performance data. Some of the newly required information would force SBDCs to capture and report data that small businesses are reluctant to share. In cases where this information is of little value to the government, these requirements place an unnecessary burden on the SBDCs and will dissuade some small businesses from seeking SBDC assistance. This bill requires the Administrator to consult with the Association of Small Business Development Centers on the creation of documents governing data collection activities related to SBDCs.

In order to obtain funding, SBDC grantees must match funds provided by the federal government with non-federal sources, such as private donations or state funds. Therefore, SBDCs often work alongside other community partners—such as a local chamber of commerce—to host events as a partnership or a co-sponsor. In these instances, a participation fee may be charged to businesses by the partnership or cosponsoring party. However, under current law SBDCs are not allowed to collect the necessary fee. Therefore, this bill permits SBDCs to collect fees or other income related to the operation of partnerships or co-sponsorships. This authorization

does not alter the no-cost counseling provided by SBDCs to individual small businesses.

Under current law, up to \$500,000 of authorized funding to SBDCs could be utilized by the Administrator to pay for examination expenses associated with reviewing SBDCs. No other entrepreneurial development program has an allocation of funds to reimburse the SBA for the agency's administrative expenses. This section eliminates the award of \$500,000 of SBDC grant monies to reimburse the SBA for program administration.

This bill enables SBDCs to operate in other states, regardless of geographical proximity to the SBDC. Currently, SBDCs can only operate out-of-state if such activities are in a bordering state or otherwise "in close geographical proximity to the SBDC." By allowing SBDCs to work within any state, SBDCs with extensive experience in particular natural disasters can assist other states which have significantly less experience during a disaster.

A majority of SBDC grantees are partnered with higher education institutions which bolster SBDCs ability to obtain private matching funding as required under law. This bill prohibits entities other than institutions of higher education from becoming grantees under §21. An exception is provided for current SBDC grantees that are not institutions of higher education. These institutions may continue to renew their status as a grantee until they no longer wish to do so or the SBA determines that these grandfathered grantees are incapable of providing such services.

The amendment removes the annual report on entrepreneurial development programs.

V. COMMITTEE VOTE

In compliance with rule XXVI (7)(b) of the Standing Rules of the Senate, the following vote was recorded on April 23, 2015.

A motion to adopt the Small Business Development Centers Improvement Act of 2015, a bill to amend the Small Business Act to provide for improvements to small business development centers, as amended by the Vitter amendment, was approved unanimously by voice vote with the following Senators present: Senators Vitter, Risch, Fischer, Gardner, Ernst, Ayotte, Enzi, Shaheen, Cantwell, Cardin, Heitkamp, Booker, Coons, Hirono, and Peters.

VI. COST ESTIMATE

In compliance with rule XXVI (11)(a)(1) of the Standing Rules of the Senate, the Committee estimates the cost of the legislation will be equal to the amounts discussed in the following letter from the Congressional Budget Office:

MAY 29, 2015.

Hon. DAVID VITTER,
Chairman, Committee on Small Business and Entrepreneurship,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 999, the Small Business Development Centers Improvement Act of 2015.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susan Willie.

Sincerely,

KEITH HALL.

Enclosure.

S. 999—Small Business Development Centers Improvement Act of 2015

S. 999 would direct the Small Business Administration (SBA) to develop procedures to collect data about Small Business Development Centers (SBDCs) that receive grants from the agency. The bill also would amend rules affecting SBDCs by, for instance, allowing them to market their services.

Based on information from the SBA, CBO estimates that implementing S. 999 would cost less than \$500,000 per year over the 2016–2020 period, assuming availability of appropriated funds, for additional data collection and monitoring activities. Enacting S. 999 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

S. 999 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Susan Willie. The estimate was approved by Theresa Gullo, Assistant Director for Budget Analysis.

VII. EVALUATION OF REGULATORY IMPACT

In compliance with rule XXVI (11)(b) of the Standing Rules of the Senate, it is the opinion of the Committee that no significant additional regulatory impact will be incurred in carrying out the provisions of this legislation. There will be no additional impact on the personal privacy of companies or individuals who utilize the services provided.

VIII. SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section provides for the title, “Small Business Development Centers Improvement Act of 2015”.

Section 2. Use of authorized entrepreneurial development programs

Currently, the Administrator is creating and separately funding initiatives developed by the agency. This section provides that all SBA-created initiatives must be delivered through the programs authorized in sections 7(j), 7(m), 8(a), 8(b)(1), 21, 22, 29, and 32 of the Small Business Act. The exceptions to this restriction, in subsections (a)(2)(A)–(E), are as follows: small business concerns owned by an Indian tribe; activities and programs in support of a member of the Armed Forces, including the Reserves and National Guard, a veteran, or a spouse of a service member or a veteran; the PRIME, STEP, and FAST programs; and other initiatives in operation at the time the Committee considered this bill.

Section 3. Marketing of services

The Small Business Act is currently silent on the question of whether SBDCs can market and advertise their products and services. Greater awareness of the services available through the SBDCs will allow more small businesses to receive entrepreneurial assistance without imposing any more financial burdens on SBDCs, the SBA, or the taxpayer. This section amends Section 21 of the Small Business Act by adding a new subsection (o), which restricts the Administrator from prohibiting applicants receiving grants under Section 21 of the Small Business Act from marketing and advertising their services to individuals and small businesses. This ensures the SBDCs are able to market and advertise their products and services.

Section 4. Data collection

In order for the SBA to provide Congress with information to properly evaluate entrepreneurial development programs, the SBA has attempted to gather better performance data. Some of the new required information would force SBDCs to capture and report data that small businesses are reluctant to share. In cases where this information is of little value to the government, these requirements place an unnecessary burden on the SBDCs and will dissuade small businesses from seeking SBDC assistance. This section requires the Administrator to consult with the Association of Small Business Development Centers on the creation of documents governing data collection activities related to SBDCs.

Section 5. Fees from private partnerships and co-sponsorships

In order to obtain funding, SBDC grantees must match funds provided by the federal government with non-federal sources, such as private donations or state funds. Therefore, SBDCs often work alongside other community partners, such as a local chamber of commerce, to host events as a partnership or a co-sponsor. In these instances, a participation fee may be charged to businesses by the partnership or cosponsoring party. However, under current law SBDCs are not allowed to collect the necessary fee. Therefore, this bill permits SBDCs to collect fees or other income related to the operation of partnerships or co-sponsorships. This authorization does not alter the no-cost counseling provided by SBDCs to individual small businesses.

Section 6. Equity for Small Business Development Centers

Under current law, up to \$500,000 of authorized funding to SBDCs could be utilized by the Administrator to pay for examination expenses associated with reviewing SBDCs. No other entrepreneurial development program has an allocation of funds to reimburse the SBA for the agency's administrative expenses. This section eliminates the award of \$500,000 of SBDC grant monies to reimburse the SBA for program administration, consistent with other entrepreneurial development programs.

Section 7. Assistance to out-of-state small businesses

Currently, SBDCs can only operate out-of-state if such activities are in a bordering state or otherwise "in close geographical proximity to the SBDC." This restricts SBDCs that have specialized ex-

perience dealing with certain natural disasters from assisting SBDCs in other regions outside of the current statutory limitations that are inexperienced with said natural disaster. For example, during Hurricane Sandy SBDCs in the affected and neighboring states had relatively little experience responding to major hurricane disasters compared to Gulf state SBDCs. Affected states during Hurricane Sandy could have greatly benefited from the Gulf states' SBDC assistance; however, current statutory law restricts their aid. Consequently, this provision enables SBDCs to operate in other states, regardless of geographical proximity to the SBDC, which follows the precedent of WBCs and SCORE, neither of which have territorial limitations.

Section 8. Confidentiality requirements

The SBA's current operational guidelines for the SBDC program require that SBDCs collect certain information on the businesses they counsel. This information is the basis for some of the performance metrics the agency uses to determine the effectiveness of the SBDCs in fulfilling their mission. Some of the information collected for this purpose, while relevant and necessary for the SBA and SBDCs, is sensitive information that small businesses wish to have treated as confidential. This sensitive information—such as the name of business—is not necessary to develop performance metrics. However, its forced disclosure could dissuade businesses from seeking assistance through the SBDCs, thereby undermining the intent of Congress when it created the SBDCs. Therefore, this section amends Section 21(a)(7)(A) of the Small Business Act to prohibit the SBA from distributing and sharing SBDC client information with other parties. This reinforces longstanding efforts to ensure the confidentiality of information that small businesses provide to SBDCs.

Section 9. Limitation on awards of grants to Small Business Development Centers

A majority of SBDC grantees are partnered with higher education institutions which bolster SBDCs ability to obtain private matching funding as required under law. This section prohibits entities other than institutions of higher education from becoming grantees under Section 21. An exception is provided for current SBDC grantees who are not institutions of higher education. These institutions may continue to renew their status as a grantee until they no longer wish to do so or the SBA determines that these grandfathered grantees are incapable of providing such services. Additionally, this provision also clarifies that this new limitation should not prohibit grant recipients from entering into grants, contracts, or cooperative agreements with any other entity.